IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.7939 OF 2004

Cornelious Max Drego .... Petitioner
Vs.
Edwin Dominc D'Souza .... Respondent

Sarvasri V.A. Thorat, Senior Advocate, with P.K. Vyas for the Petitioner.

Sarvasri Y.S. Jahagirdar, Senior Advocate, with Denzil D'Mello for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: NOVEMBER 22, 2004

P.C:

1. Heard the learned Advocates for the parties.

2. The petitioner challenges the concurrent findings arrived at by the Courts below regarding the bona fide need of the suit premises to the respondent and consequently direction for the eviction of the petitioner from the suit premises. The learned Advocate for the petitioner, while assailing the impugned order, submitted that the eviction of the petitioner was mainly sought for on the ground that the premises presently in occupation of the respondent do not belong to the respondent and they belong to his brother-in-law and as the brother-in-law wants to occupy those premises for himself, his wife and children and he had served a

notice dated 1-1-1990 in that regard. Attention was drawn in that regard to para 3 of the plaint in the suit filed by the respondent. Further, referring to the finding arrived at by the lower Appellate Court in relation to the absence of the right to occupy the present premises, in occupation of the respondent, it was sought to be contended that the said finding discloses totally erroneous approach on the part of the Courts below and total non-application of mind to the materials on record in as much as that the finding about the absence of interest in favour of the respondent in the premises in his occupation has been arrived at contrary to the materials on record and the specific plea sought to be raised by the respondent in the course of the evidence that he is in occupation of those premises as the tenant thereof. This, according to the learned Advocate, further discloses totally erroneous approach by the trial Court in the matter of appreciation of the evidence on record and particularly in relation to the basic ground on which the respondent had sought the eviction of the petitioner from the suit premises. It is his further contention that both the Courts below have failed to take note of the death of the brother-in-law of the respondent during the pendency of the proceedings and the consequential absence of need of the premises in the occupation of the respondent as well as the materials on record which disclose that the

brother-in-law of the respondent and his family members are in occupation of Andor Apartment which consist of ground plus two storey building and adjoining the premises in occupation of the respondent and consequently there being no need for the family of the deceased brother-in-law to seek eviction of the respondent from the premises which is occupied by him.

3. Perusal of the impugned order passed by the lower Appellate Court undoubtedly discloses that the respondent has no right, title or interest in the Bandra premises which are presently in occupation of the respondent for his residence. However, the said observation is preceded by further finding to the effect that the premises occupied by the respondent belong to the brother-in-law of the appellant Mr. Rana. In other words, the observations regarding the absence of right, title or interest in the Bandra premises were in relation to the issue pertaining to the ownership of the premises and not in some other capacity.

4. The fact that the respondent had specifically pleaded about the service of notice dated 1-1-1990 by his brother-in-law disclosing requirement of the premises for the latter’s occupation and on that count the respondent having approached the Court to seek the eviction of the petitioner from the suit premises, as

well as the said letter having been produced on record is not in dispute. It is also not in dispute that there was no challenge to the fact of issuance of the said letter and on the contrary the evidence recorded by the Court and which was read over discloses that it was the case of the petitioner himself in the course of his cross-examination of the respondent that the brother-in-law was constantly pressurising the latter to vacate the premises in occupation of the respondent and the said fact, however, was not disclosed to the petitioner till the service of the notice dated 1-1-1990. It was sought to be contended that apart from production of the said letter, the respondent did not examine any of the family members of the brother-in-law of the respondent to substantiate the claim regarding need of the brother-in-law's family to occupy the premises which are in occupation of the respondent. The fact that the respondent's brother-in-law had sent a notice in that regard was not in dispute. It was merely sought to be suggested to the respondent that the said notice was procured only to justify the claim regarding the petitioner's eviction from the suit premises. Indeed, the same arguments could not have been advanced in relation to the testimony of any such relations. Nevertheless, the issue as to whether the brother-in-law genuinely required the premises in occupation of the respondent or not was not a relevant issue to decide the

bona fide need of the suit premises to the respondent. Undisputedly, the respondent does not have any ownership right in the premises in his occupation. Being so, once the respondent had expressed desire to get his own premises for his residence and that is coupled with the demand of the premises in his occupation from his brother-in-law, these facts apparently disclosed the bona fide need of the suit premises to the respondent. Being so, mere absence of examination of the family members of the brother-in-law of the respondent cannot be a justification for interference in the impugned order which apparently discloses a clear finding regarding the bona fide need of the suit premises to the respondent on detail analysis of the evidence on record.

5. As regards the effect of death of the brother-in-law of the respondent, undisputedly, the petitioner has not brought on record any material in that regard. It is to be noted that the pleadings in para 3 did not disclose that the premises in occupation of the respondent were required for the personal occupation of his brother-in-law Rana. On the contrary, the pleadings were to the effect that those premises were required for the occupation of his brother-in-law and of his family members. Undoubtedly therefore, merely because the brother-in-law had expired, it cannot lead to the conclusion that the premises are no more required for

the family members of the deceased brother-in-law. The evidence as regards the Andor Apartment, attention to which was drawn, undisputedly is in occupation of the brother-in-law since 1982. The testimony of the respondent, which was read over in the course of the arguments, apparently discloses that there had been persistent demand by the brother-in-law of the respondent to vacate the premises since 1979 onwards. However, the letter in that regard was issued only on 1-1-1990 and thereafter the proceedings for eviction of the petitioner were filed. In the background of these facts, the findings arrived at by the Court below regarding sufficient cause being made out pertaining to the bona fide need of the suit premises for the occupation of the respondent cannot be found fault with.

6. As no other ground is sought to be raised in the matter, there is no case for interference in the impugned judgments which disclose concurrent findings on the relevant issues and hence the petition is rejected.

7. On oral request by the learned Advocate for the petitioner, the execution of the impugned judgments shall remain suspended till 31-1-2005 subject to filing undertaking by the petitioner and every major member of the petitioner’s family as well as those occupying the premises, to be filed before the Registrar (Judl.) of

this Court within three weeks from today assuring that the petitioner shall handover the vacant and peaceful possession of the suit premises to the respondent on or before 31-1-2005 and shall not induct any third person

nor shall create any third party interest in the suit premises.